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No. 74-869

# In the Supreme Court of the United States

OCTOBER TERM, 1974

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UNITED STATES OF AMERICA, PETITIONER

*v.*

UNITED CONTINENTAL TUNA CORPORATION

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## BRIEF FOR THE PETITIONER

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## BRIEF FOR THE PETITIONER

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, pp. 1a-8a) is reported at 499 F.2d 774. The findings of fact and conclusions of law and the judgment of the district court (Pet. App. B, pp. 9a-15a) are not reported.

### JURISDICTION

The judgment of the court of appeals was entered on June 24, 1974 (Pet. App. C, p. 16a), and the court

of appeals denied a timely petition for rehearing on August 21, 1974 (Pet. App. D, p. 17a). The petition for a writ of certiorari was filed on January 15, 1975, Mr. Justice Douglas having extended the time for petitioning to and including January 18, 1975. This Court granted certiorari on March 17, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether as a result of the 1960 amendment (74 Stat. 912) to the Suits in Admiralty Act, 46 U.S.C. 741-752, suits involving public vessels of the United States need no longer be brought under the Public Vessels Act, 46 U.S.C. 781-790, but may be brought under the Suits in Admiralty Act.

## STATUTES INVOLVED

The Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U.S.C. 741, *et seq.*, provides in relevant part:

46 U.S.C. 741:

> No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam,



> be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this chapter shall not apply to the Panama Railroad Company.

46 U.S.C. 742:

> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

The Public Vessels Act, 43 Stat. 1112, as amended, 46 U.S.C. 781, *et seq.*, provides in relevant part:

46 U.S.C. 781:

> A libel in personam in admiralty may be bought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, That the cause of action arose after the 6th day of April, 1920.

46 U.S.C. 782:

> Such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of chapter 20 of this title [the Suits in Admiralty Act] or any amendment thereof, insofar as the same are not inconsistent herewith, except that no interest shall be allowed



> on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

46 U.S.C. 785:

> No suit may be brought under sections 781 to 790 of this title by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

## STATEMENT

Alleging jurisdiction under the Suits in Admiralty Act, 46 U.S.C. 741-752, and the Public Vessels Act, 46 U.S.C. 781-790, respondent, a Philippine corporation, brought suit against the United States in the United States District Court for the Central District of California. Respondent sought recovery for damages resulting from the sinking of its fishing vessel after a collision with the *U.S.S. Parsons*, a naval destroyer of the United States (App. 5-7). The district court granted the United States' motion for summary judgment (App. 15-17) on the ground that the Philippine corporation was a foreign national subject to the reciprocity provision of the Public Vessels Act, 46 U.S.C. 785, and that respondent had not proved, as it was required to do, that the Philippine government would consent to be sued if a similar action had been brought against it by nationals of the United States (Pet. App. B, p. 13a).

The court of appeals reversed, holding that the 1960 amendment to the Suits in Admiralty Act which, *inter alia*, eliminated the requirement in 46 U.S.C. 742 that any vessel involved in a suit under that Act be "employed as a merchant vessel," broadened the jurisdictional reach of that Act to encompass all maritime actions against the United States, including those previously cognizable only under the Public Vessels Act (Pet. App. A, pp. 5a-8a). The court concluded that since respondent's suit was maintainable under the Suits in Admiralty Act, and since that Act has no reciprocity requirement, the district court should not have granted summary judgment to the United States (Pet. App. A, pp. 7a-8a). In reaching this result the court of appeals acknowledged that it was permitting the circumvention of the Public Vessels Act "in a manner neither explicitly authorized nor perhaps contemplated by Congress" (Pet. App. A, p. 7a).

## SUMMARY OF ARGUMENT

In the Public Vessels Act, 46 U.S.C. 781, *et seq.*, Congress has consented to suits against the United States for damages "caused by a public vessel of the United States" (46 U.S.C. 781). The Act provides that such suits shall also be subject to the Suits in Admiralty Act, 46 U.S.C. 741, *et seq.*, to the extent the provisions of the two acts are not inconsistent (46 U.S.C. 782). The Public Vessels Act, however, imposes a number of additional requirements on litigants. Thus, a foreign national cannot bring suit



unless it is established that his government "under similar circumstances, allows nationals of the United States to sue in its courts" (46 U.S.C. 785). In addition, no subpoena can be served on officers or members of the crew of a public vessel without the consent of either the Secretary of the Navy or the Commander of the vessel (46 U.S.C. 784), and in time of war, the Secretary of the Navy may obtain a stay of all proceedings brought under the Public Vessels Act (10 U.S.C. 7721-7730).

In 1960, the Suits in Admiralty Act (but not the Public Vessels Act) was amended to resolve a jurisdictional conflict between district courts and the Court of Claims. Nothing in either the language or legislative history of the 1960 amendment suggests that Congress intended to affect the operation of the Public Vessels Act in any manner. The court of appeals nevertheless held, in effect, that the 1960 amendment to the Suits in Admiralty Act repealed the Public Vessels Act by implication.

The decision of the court of appeals is contrary to settled principles of statutory construction reflected in this Court's decisions. Repeal by implication is not favored, *e.g.*, *Silver* v. *New York Stock Exchange*, 373 U.S. 341, especially where, as here, it finds no support in the legislative history. Moreover, even if the 1960 amendment could literally be read to enlarge the scope of the Suits in Admiralty Act, the specific provisions of the Public Vessels Act must control in suits involving public vessels. *Preiser* v. *Rodriguez*, 411 U.S. 475. Finally, the decision

frustrates congressional intent in a manner that is potentially threatening to United States naval operations and creates an irrational statutory scheme in which application of the requirements of the Public Vessels Act is at the option of the plaintiff.

## ARGUMENT

### SUITS INVOLVING PUBLIC VESSELS OF THE UNITED STATES MUST BE BROUGHT UNDER THE PUBLIC VESSELS ACT, NOTWITHSTANDING THE 1960 AMENDMENT TO THE SUITS IN ADMIRALTY ACT.

The court of appeals erroneously construed the 1960 amendment to the Suits in Admiralty Act because, we submit, it focused only on the literal wording of the amendment without considering its purpose. As we discuss below, there is no indication in the legislative history that Congress intended the 1960 amendment to the Suits in Admiralty Act to affect the Public Vessels Act in any manner (see pp. 11-17, *infra*)—a conclusion that is confirmed by considering the amendment against the background of prior maritime legislation.[1]

[1] The legislative history that follows is recounted in *Johansen* v. *United States*, 343 U.S. 427, 432-434, *American Stevedores* v. *Porello*, 330 U.S. 446, 450-454, and *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215, 218-225. See also *Ansell* v. *United States*, 384 U.S. 158, 164-165.



#### A. The Legislative History of the 1960 Amendment Reveals No Congressional Intent to Modify the Public Vessels Act

This is surely a case where—in Mr. Justice Holmes' phrase—a "page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349. Before 1916 the doctrine of sovereign immunity precluded a suit by a private owner whose vessel was damaged by the negligent operation of a vessel owned or operated by the United States. The United States could, however, sue private owners for damages to its vessels arising from the owner's negligence. Congressional attempts to deal with this inequity through the mechanism of the private bill proved cumbersome and inadequate. Accordingly, in 1916, when Congress passed the Shipping Act, 39 Stat. 728, 46 U.S.C. 801, *et seq.*, it included a provision that vessels of the old Shipping Board "while employed solely as merchant vessels" would be "subject to all laws, regulations, and liabilities governing merchant vessels" even though the United States owned or had an interest in them. 46 U.S.C. 808.

In 1920 in response to this Court's decision in *The Lake Monroe*, 250 U.S. 246, which held that the Shipping Act subjected Shipping Board vessels to proceedings *in rem* in admiralty, including arrest and seizure, Congress enacted the Suits in Admiralty Act, which prohibits the arrest or seizure of any vessel or cargo owned by or in the possession of the United States, as well as any vessel privately owned but operated for or by the United States (46 U.S.C. 741). The Suits in Admiralty Act waived sovereign im-

munity, however, by authorizing a libel *in personam* against the United States in cases involving any vessel owned by, or operated for or by, the United States, provided both that (prior to 1960) the vessel was "employed as a merchant vessel" and that such a proceeding could have been maintained had the vessel been a private vessel.[2] Although the inclusion of "public vessels" under the Suits in Admiralty Act was proposed, Congress was unwilling to extend the Act to cover non-merchant vessels owned by the United States.

In 1925 Congress filled the gap by passing the Public Vessels Act, which authorized a libel *in personam* against the United States "for damages caused by a public vessel of the United States" and for compensation for towage and salvage services rendered to such a vessel. 46 U.S.C. 781. Although the Act specified that suits authorized by it were "subject to" and would "proceed in accordance with" the provisions of the Suits in Admiralty Act "insofar as the same are not inconsistent" with the provisions of the Public Vessels Act (46 U.S.C. 782), it contained special limitations. Thus it prohibited the subpoenaing of officers or members of the crew of public vessels without the government's consent, 46 U.S.C. 784, and it barred any suit by a national of a foreign government unless the plaintiff could establish that his government, in similar circumstances, would allow nationals of the United States to sue in its courts. 46 U.S.C. 785.

[2] Before 1960 the Suits in Admiralty Act, 46 U.S.C. (1958 ed.) 742, provided in relevant part:

> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of commencement of the action herein provided for, a libel in personam may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. * * *



Although the combination of the Suits in Admiralty Act and the Public Vessels Act gave jurisdiction to the admiralty side of federal district courts in all maritime actions against the United States involving vessels, prior to 1960 such jurisdiction did not exist over non-vessel maritime contract or tort claims against the United States. Such maritime contract claims were cognizable only in the Court of Claims (or on the law side of federal district court if the claim did not exceed $10,000) under the Tucker Act, 28 U.S.C. 1346(a)(2), 1491, while such maritime tort claims were cognizable only on the law side of federal district court under the Federal Tort Claims Act, 28 U.S.C. 1346(b), *et seq.*[3]

Prior to 1960, courts and litigants involved in maritime actions against the United States were thus faced with at least two sets of jurisdictional dichotomies: (1) vessel claims versus non-vessel claims and (2) "merchant" vessel claims versus "non-merchant" vessel claims.

[3] See, *e.g.*, *Somerset Seafood Co.* v. *United States*, 193 F.2d 631 (C.A. 4).

In a number of factual contexts it became difficult for courts to determine whether a claim was a vessel claim, cognizable on the admiralty side of federal district court, or a non-vessel claim, cognizable in the Court of Claims.[4] This difficulty created serious problems for litigants. The Court of Claims had no power to transfer actions erroneously commenced under the Tucker Act to the federal district courts, and since the Tucker Act has a six-year limitation

[4] For example, in *Eastern Steamship Lines* v. *United States*, 187 F.2d 956 (C.A. 1), the court held that an action by the private owner of a vessel, which had been chartered by the United States for wartime use, to recover $5 million in restoration costs could not be maintained in federal district court under either the Suits in Admiralty Act or the Public Vessels Act but only in the Court of Claims under the Tucker Act. On the other hand, in *Aliotti* v. *United States*, 221 F.2d 598 (C.A. 9), the court held on virtually the same facts that such an action was maintainable exclusively on the admiralty side of federal district court under the Public Vessels Act. This Court noticed, but had no occasion to resolve, the conflict, although it warned that "[i]t is not to be assumed that all claims sounding in contract form the basis of a suit under the Public Vessels Act." *Calmar Steamship Corp.* v. *United States*, 345 U.S. 446, 456, n.8.

The widespread nature of the problem was reflected in the fact that on a single day in 1954 the Court of Claims dismissed six actions brought under the Tucker Act on the ground that they were cognizable only on the admiralty side of federal district court under the Suits in Admiralty or Public Vessels Acts. *Wessel, Duval & Co.* v. *United States*, 124 F.Supp. 636; *Waterman Steamship Corp.* v. *United States*, 124 F. Supp. 634; *Sinclair Refining Co.* v. *United States*, 124 F. Supp. 628; *Compania Ithaca De Vapores, S.A.* v. *United States*, 124 F. Supp. 627; *Polar Compania De Navegacion* v. *United States*, 124 F. Supp. 625; *Lykes Bros. Steamship Co.* v. *United States*, 124 F. Supp. 622.



period (28 U.S.C. 2401(a)) while the two admiralty acts have a two-year limitations period (46 U.S.C. 745, 782), litigants who misfiled in the Court of Claims often found that it was too late to file anew in federal district court. Litigants could not protect themselves by filing simultaneously in both courts because under 28 U.S.C. 1500 the Court of Claims has no jurisdiction over, and is bound to dismiss, any claim that is the subject of a pending suit against the United States in any other court. *Wessel, Duval & Co.* v. *United States*, 124 F. Supp. 636 (Ct. Cl.).

Moreover, courts had trouble determining whether a particular vessel was "employed as a merchant vessel" within the meaning of the Suits in Admiralty Act.[5] As this Court pointed out in *Calmar Steamship Corp.* v. *United States*, 345 U.S. 446, 455, the consequence of holding that a vessel was not "employed as a merchant vessel" was usually insignificant where the vessel was publicly owned by the United States since "in the great[er] number of instances * * * the libel is dismissed under the Suits in Admiralty Act only to be heard under the Public Vessels Act in the same admiralty court." However, when the vessel was privately owned but operated by or for the

[5] Thus in *Calmar Steamship Corp.* v. *United States, supra*, this Court reversed the Second Circuit and held that a privately owned vessel operated for hire by the United States and engaged on a war mission was "employed as a merchant vessel," while in *Geo. W. Rogers Const. Corp.* v. *United States*, 118 F. Supp. 927 (S.D. N.Y.), the court, distinguishing *Calmar*, held that a United States Merchant Marine vessel which was carrying fuel oil for the United States Navy during peacetime was not "employed as a merchant vessel."

United States, "to hold that she was not employed as a merchant vessel [was] to relegate the libelant, on a contract claim substantial enough not to be cognizable on the law side under the Tucker Act, 28 U.S.C. (Supp. III) § 1346, to the Court of Claims." *Ibid.*; footnote omitted. The Court found this troubling because "the District Courts are, in our judicial system, the accustomed forum in matters of admiralty; everything else being equal, no efforts should be made to divert this type of litigation to judges less experienced in admiralty." *Ibid.*

Congressional efforts to extricate the courts and litigants from these jurisdictional quiddities began in 1958 when the House of Representatives passed a bill amending Title 28 of the United States Code to permit the transfer of cases between the Court of Claims and federal district courts.[6] An identical bill[7] was passed by the House in 1959 and considered by the Senate Committee on the Judiciary. During its deliberations, the Senate Judiciary Committee received a communication from the Secretary of Commerce, as head of the Federal Maritime Administration, criticizing the House transfer bill as inadequate and recommending direct amendment of the Suits in Admiralty Act in order to "attack the problem on a fundamental basis" and eliminate the problems arising from "uncertainty as to the field of jurisdiction of the Court of Claims and the district courts of the United States." S. Rep. No. 1894, 86th Cong., 2d Sess. 8-11 (1960).

[6] The bill, H.R. 3046, 85th Cong., 2d Sess., was passed on July 21, 1958 (104 Cong. Rec. 14433-14434 (1958)), but it did not emerge from the Senate Committee on the Judiciary before the expiration of the 85th Congress.

[7] H.R. 5396, 86th Cong., 1st Sess. (1959).



In accordance with this recommendation, in which the Department of Justice and the Maritime Law Association concurred, the Judiciary Committee added a new section to the House bill which directly amended the Suits in Admiralty Act in two ways. First, it provided that if an admiralty proceeding could be maintained in a given case "if a private person or property were involved," a similar admiralty proceeding could be brought against the United States. Second, it struck the proviso that if a vessel were involved it had to be "employed as a merchant vessel." This version of the House bill, which was reported favorably by the Senate Judiciary Committee, became law on September 13, 1960.[8]

The 1960 amendment to the Suits in Admiralty Act removed the "uncertainty as to the field of jurisdiction of the Court of Claims and the district courts of the United States" (S. Rep. No. 1894, *supra*, at p. 10) by effectively eliminating the quasi-admiralty jurisdiction of the Court of Claims. The addition of

[8] 74 Stat. 912. The present version of 46 U.S.C. 742 provides in relevant part:

> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. * * *

the phrase "or if a private person or property were involved" to 46 U.S.C. 742 guarantees that those non-vessel maritime contract claims previously held cognizable in the Court of Claims, as well as those non-vessel maritime tort claims previously held cognizable on the law side of federal district court, would be cognizable on the admiralty side of federal district court.[9] Thus, the old dichotomy between vessel and non-vessel claims is virtually extinct.[10] Similarly, the elimination of the phrase "employed as a merchant vessel" from 46 U.S.C. 742 guarantees that all maritime claims involving privately owned vessels operated for or by the United States, which previously

[9] In the following cases the courts held that maritime tort claims against the United States, previously cognizable on the law side of federal district court under the Federal Tort Claims Act, were cognizable only on the admiralty side of federal district court under the Suits in Admiralty Act as a result of the 1960 amendment: *T. J. Falgout Boats, Inc.* v. *United States*, 361 F. Supp. 838 (C.D. Cal.), affirmed, 508 F.2d 855 (C.A. 9), petition for a writ of certiorari filed March 22, 1975 (No. 74-1215); *Roberts* v. *United States*, 498 F.2d 520 (C.A. 9), certiorari denied, December 15, 1974 (No. 74-368); *De Bardeleben Marine Corp.* v. *United States*, 451 F.2d 140 (C.A. 5); *Utzinger* v. *United States*, 246 F. Supp. 1022 (S.D. Ohio); *Tankrederiet Gefion A/S* v. *United States*, 241 F. Supp. 83 (E.D. Mich.); *Tebbs* v. *Baker-Whitely Towing Co.*, 227 F. Supp. 656 (D. Md.); *Beeler* v. *United States*, 224 F. Supp. 973 (W.D. Pa.), reversed on other grounds, 338 F.2d 687 (C.A. 3).

[10] There may still be isolated instances in which claims arising in a maritime context will be cognizable in the Court of Claims. In *Amell* v. *United States*, 384 U.S. 158, this Court held that wage claims (exceeding $10,000) by government employees who were also seamen were cognizable exclusively in the Court of Claims under the Tucker Act, and not in federal district court under the Suits in Admiralty Act.



might have been relegated to the Court of Claims (see *supra*, pp. 13-14), will be heard in federal district court, regardless of whether the vessels are "merchant" vessels.

Congress had a particular problem before it, which stemmed from the division of jurisdiction between the district courts and the Court of Claims, and the 1960 amendments were aimed at solving that problem. Of course, no such problems existed prior to 1960 with respect to claims involving *publicly* owned vessels of the United States since, as this Court observed in *Calmar* (see *supra*, p. 13), if the district court determined that such vessels were not "merchant" vessels the claims could still be heard in the same court under the Public Vessels Act. Hence the elimination of the phrase "employed as a merchant vessel" in the Suits in Admiralty Act was not designed to disturb the ongoing admiralty jurisdiction of the federal district courts under the Public Vessels Act over claims involving publicly owned vessels of the United States.

As the court below pointed out, the Suits in Admiralty Act, as amended in 1960, now could be read to encompass suits against the United States regarding any type of vessel, including "public vessels." Whether such a reading should be made is quite another matter. In support of its view, the court of appeals cited *Ira S. Bushey & Sons, Inc.* v. *United States*, 398 F.2d 167 (C.A. 2), *T. J. Falgout Boats, Inc.* v. *United States*, 361 F. Supp. 838 (C.D. Cal.), affirmed, 508 F.2d 855 (C.A. 9), petition for a writ of certiorari filed March 22, 1975 (No. 74-1215), and

*Richmond Marine Panama, S.A.* v. *United States*, 350 F. Supp. 1210 (S.D.N.Y.). But these decisions do not support the proposition, stated by the court below, that, as a result of the 1960 amendment, many courts have held that the Suits in Admiralty Act now encompasses "all maritime claims against the United States, regardless of the type of vessel involved" (Pet. App. A, pp. 6a-7a).

In *Ira S. Bushey* the court of appeals held only that the amended Suits in Admiralty Act encompassed a maritime tort claim that the district court had ruled was cognizable solely under the Federal Tort Claims Act.[11] The court's remark that the purpose of the 1960 amendment was to bring "all maritime claims against United States vessels *into the admiralty jurisdiction of the district courts*" (398 F.2d at 169; emphasis added) must be read to refer to those maritime claims previously cognizable in the Court of Claims or on the law side of federal district courts, since even prior to 1960 claims involving publicly owned vessels of the United States were cognizable solely in the "admiralty jurisdiction of the district courts" under the Public Vessels Act.[12] A careful

[11] Although the court also indicated its belief that admiralty jurisdiction could have been found under the Public Vessels Act as well, it did not explicitly so hold. In any event, there is no indication that it would have made a practical difference in that case whether admiralty jurisdiction was assumed under the Suits in Admiralty Act or the Public Vessels Act, and the court of appeals did not address itself, much less purport to decide, the issues raised in this case.

[12] *T. J. Falgout Boats, supra*, also involved a claim filed under the Federal Tort Claims Act. There the plaintiff sought to recover for damages to its vessel allegedly caused by a missile released from a navy airplane. A public vessel was not involved and neither the district court nor the court of appeals referred to the Public Vessels Act.



reading of the district court's supplemental opinion in *Richmond Panama, supra*, 350 F. Supp. at 1219-1221, which the court below also cited, reveals that plaintiff's claim was brought solely under the Suits in Admiralty Act and involved the negligence of Coast Guard personnel, not damage caused by a publicly owned vessel of the United States. None of these cases held, as the court of appeals here has held, that as a result of the 1960 amendment, the Suits in Admiralty Act supersedes the Public Vessels Act in cases involving publicly owned vessels of the United States.

In sum, although as a result of the 1960 amendment deleting the phrase "employed as a merchant vessel," the Suits in Admiralty Act could literally be read to authorize proceedings against "public vessels," no other court has adopted this interpretation and the history of the amendment demonstrates that Congress did not intend such a reading, which would have the effect of repealing the Public Vessels Act. As shown above, the 1960 amendment was designed solely to cure a jurisdictional problem arising from the quasi-admiralty jurisdiction of the Court of Claims—a problem that never existed in suits under the Public Vessels Act since such suits were always cognizable in district courts. There is nothing to commend the contrary interpretation of the court of ap-

peals in this case. Surely an objection to the reciprocity requirement of the Public Vessels Act cannot support the decision below.[13] Any change in that requirement is for Congress to consider and in enacting the 1960 amendment to the Suits in Admiralty Act Congress did not address the matter.

### B. The Construction of the 1960 Amendment by The Court of Appeals is Contrary to Settled Principles of Statutory Construction

Although this case involves only the reciprocity requirement of the Public Vessels Act, the decision of the court of appeals effectively repeals the Public Vessels Act in its entirety because the court held that suits involving public vessels need not be brought under the Public Vessels Act. Given such an option, the plaintiff's choice is clear. This repeal by implication of the Public Vessels Act was accomplished by the court of appeals despite its recognition that such repeal was "neither explicitly authorized nor perhaps contemplated by Congress" (Pet. App. A, p. 7a). But it is well settled that repeal by implication is not favored, *e.g.*, *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 357, especially when, as here, the purposes of the 1960 amendment were wholly unrelated to the policies of the Public Vessels Act.

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[13] Compare the statement of the court below that "our conclusion here is consonant with the modern view which liberally construes waivers of governmental immunity" (Pet. App. A, p. 8a).



The fact that the 1960 amendment can be literally read to encompass suits involving public vessels does not justify construing it to supersede the Public Vessels Act. Congress recognized that the provisions of the Public Vessels Act and the Suits in Admiralty Act are not entirely consistent (46 U.S.C. 782) and that suits involving public vessels must satisfy the specific requirements of the Public Vessels Act.

As this Court has held, "[s]pecific terms prevail over the general in the same or another statute which otherwise might be controlling." *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U.S. 204, 208; *MacEvoy Co.* v. *United States*, 322 U.S. 102, 107. This principle applies even if the general terms became effective, as here, subsequent to the specific terms. *Bulova Watch Co.* v. *United States*, 365 U.S. 753, 758.

Thus in *Preiser* v. *Rodriguez*, 411 U.S. 475, 489, the Court held that the specific terms of the federal habeas corpus statute (28 U.S.C. 2254) provided the exclusive remedy for state prisoners attacking the validity of the fact or length of their confinement "despite the literal applicability" of the broad general language of 42 U.S.C. 1983. The Court ruled that since the habeas corpus statute was "explicitly and historically designed" to cover the situation, its terms "must override the general terms of § 1983." 411 U.S. at 489, 490.

The Public Vessels Act was "explicitly and historically designed" to cover claims, such as the instant one, involving publicly owned vessels of the United States, and suits presenting such claims must

satisfy the requirements of the specific terms of the Public Vessels Act, even if they come within the literal terms of Suits in Admiralty Act.

Respondent's suit, involving a claim of damages caused by a Navy destroyer, is covered by the Public Vessels Act, and the court of appeals erred in reversing the district court's judgment that respondent's failure to satisfy the reciprocity requirement of the Act was fatal to its claim.

### C. The Decision of the Court of Appeals Nullifies Important Congressional Policies

Since the decision of the court of appeals effectively repeals the Public Vessels Act, it will, if permitted to stand, nullify several important congressional policies concerning suits involving public vessels.

For example, under 46 U.S.C. 784, officers and members of the crew of any publicly owned vessel of the United States may not be subpoenaed in connection with any suit authorized under the Public Vessels Act without the consent of the Secretary of the Department or the person in control of the vessel at the time of the issuance of the subpoena. No such protection exists in suits authorized under the Suits in Admiralty Act.

More important, pursuant to 10 U.S.C. 7721-7730, the Secretary of the Navy, during time of war, may obtain a stay of any suit or proceedings brought under the Public Vessels Act when it appears that prosecution of the suit might interfere with naval operations. No such protection is available for suits brought under the Suits in Admiralty Act. The decision of the court of appeals nullifies the protection afforded by 10 U.S.C. 7721-7730 with potentially serious implications for the security of naval operations.[14]



The financial and administrative implications of the decision of the court of appeals are also substantial. The Suits in Admiralty Act permits interest on judgments to accrue from the time suit is filed. 46 U.S.C. 745. The Public Vessels Act, on the other hand, does not allow interest to accrue prior to the time of judgment. 46 U.S.C. 782. If the suit here proceeded under the Suits in Admiralty Act and respondent prevailed, the difference in the interest award would approximate $250,000.

Why these policies reflected in the Public Vessels Act and the reciprocity requirement may be disregarded at the pleader's option is impossible to say. Still less is there any reason why Congress could ever have intended such a result. Yet that is the consequence if the decision below stands since litigants could then bring actions under the Suits in Admiralty Act that otherwise could have been brought only under the Public Vessels Act.[15] The unsoundness

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[14] We are advised by the Department of the Navy that the Secretary obtained stays under 10 U.S.C. 7721-7730 in 12 suits during World War II.

[15] The court of appeals pointed out that the more stringent venue requirements of the Suits in Admiralty Act may effectively preclude some foreign nationals from using it, thus relegating them to the Public Vessels Act, which provides venue "in any district court of the United States" (46 U.S.C. 782) when the other venue requirements cannot be met (Pet. App. A, pp. 7a-8a). The court's observation in this regard

of such a statutory scheme in itself indicates that the court of appeals has misinterpreted the Suits in Admiralty Act.

## CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be reversed and the judgment of the district court reinstated.

Respectfully submitted.

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underscores the incorrectness of the result it reached. For it is difficult to imagine why Congress would have desired to have the applicability of the Public Vessels Act turn on whether the plaintiff could meet the venue requirements of the Suits in Admiralty Act and to have amended that Act to cover all claims previously covered by the Public Vessels Act and, yet at the same time, to have failed to provide a venue for some litigants.

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